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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re AYDEN L. et al., as Persons Coming  
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

JESSICA B.,

Defendant and Appellant.

G053800

(Super. Ct. Nos. DP024728-001,  
DP024728A, DP024729-001 &  
DP024729A)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Caryl Lee,  
Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Aurelio Torre,  
Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

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Jessica B. (the mother) appeals from an order of the juvenile court terminating her parental rights to her young sons, Ayden and Joshua. She argues that the court erred in failing to apply the parent-child beneficial relationship exception (the benefit exception) to the termination of parental rights. (Welf. Inst. Code, § 366.26, subd. (c)(1)(B)(i).)<sup>1</sup> Because the mother has failed to demonstrate that she had a sufficient parental relationship to overcome the statutory preference for adoption, we affirm the juvenile court's order.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

In March 2014, Ayden, who was 22 months old at the time, and Joshua, who was four months old, were taken into protective custody by the Orange County Social Services Agency (SSA). During an incident of domestic violence, the mother was holding Ayden while Joshua was in a crib in the same room. The father of the boys hit Ayden on the forehead with a closed fist while attempting to punch the mother.<sup>2</sup> The couple had a long history of domestic violence.

#### *Reunification Period*

In April 2014, the mother and the father each pleaded no contest to an amended jurisdictional petition. The juvenile court determined that Ayden and Joshua came within its jurisdiction under section 300, subdivision (b) (failure to protect), removed the boys from the custody of the parents, and ordered reunification services for both parents.

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<sup>1</sup> Subsequent statutory references are to the Welfare and Institutions Code.

<sup>2</sup> The father is not a party to this appeal.

In October 2014, at the six-month review hearing, continued services were ordered. In the intervening period, the father on two occasions had accosted the mother after her anger management class, forced her into his car, and drove away. The mother did not seek a restraining order. The boys had been placed into the home of their maternal aunt. The parents had supervised visits with the boys. During the mother's visits, she was attentive to the children.

In April 2015, at the 12-month review hearing, continued services were ordered. At this time, the custody of the boys had been transferred to their maternal great aunt. SSA had authorized the mother to have unsupervised visits. SSA noted that the children had demonstrated a strong bond with their mother.

In September 2015, at the 18-month review hearing, the juvenile court ordered the children to be returned to the custody of the mother and ordered continuing supervision for six more months. Under the supervision of the SSA, the children had been transferred to the care of the mother on a trial basis and were doing well.

In December 2015, SSA again removed the children from the custody of the mother. The police had responded to another domestic violence incident. The father had punched the mother on the cheek, causing bruising. A social worker had assessed the risk level to the children as "Very High." She stated that: "The mother is unable or unwilling to protect the children from serious harm or threatened harm by others." SSA recommended setting a section 366.26 hearing to select a permanent plan for Ayden and Joshua.

#### *Postreunification and Section 366.26 Proceedings*

In February 2016, the juvenile court determined that no further reunification services were warranted and set a section 366.26 hearing. The court authorized placement with the children's maternal aunt who was now living with her

husband at Vandenberg Air Force Base, in Lompoc. The maternal aunt and uncle had bonded with the boys and they were very committed to a permanent plan of adoption.

During this period, the parents generally visited the boys on a bi-weekly basis supervised by a neutral monitor. The mother's visits were consistent and of good quality. She interacted and played with the boys appropriately. The mother would have weekly video calls with the boys, but they were very brief and the boys would lose interest in the calls. The boys had significant contact with their other maternal relatives. They had a strong bond with their caretakers, their maternal aunt and uncle. While the boys acknowledged their biological parents as parental figures, they also had a parental bond with their caretakers. The lack of recent contacts with the boys' biological parents did not have "a great negative effect on their emotional, behavioral or overall well being."

In July 2016, the section 366.26 hearing took place. The juvenile court considered all of the social services reports that had been prepared in the months leading up to the hearing. The children (through their counsel) and SSA argued in favor of the termination of parental rights. The mother testified at the hearing. She argued against termination of her parental rights under the benefit exception. There was a stipulation that the mother had maintained regular visitation and contact with the boys.

The juvenile court noted that while the visitations were regular, they did not "rise to the level of actual parenting. It's more of a friendly visitor characterization and certainly, terminating parental rights is very difficult, but at the same time, the children would not -- there would be no detriment suffered by the termination of parental rights, and in fact, it would be in their best interest for the court to do so for the hope of permanency. Also recognizing that there is a consortium agreement that can assist in having some contact continue. [¶] So the court does find that these children are adoptable and that the court orders parental rights terminated and that the children be placed for adoption." The court found that none of the exceptions under section 366.26,

subdivision (c), applied “and that adoption of the children and termination of parental rights is in their best interest and a permanent plan of adoption is appropriate and is ordered as the permanent plan.”

## II

### DISCUSSION

“The purpose of the California dependency system is to ‘provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, . . . and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.’ [Citations.] The dependency system is child-centered and is designed to protect the child, reunify the family where safe for the child and find a permanent home for the child when reunification is not possible. Its guiding light is the child’s best interests.” (*In re Y.M.* (2012) 207 Cal.App.4th 892, 913; see § 300.2.) If reunification with the family is not possible and the juvenile court terminates reunification services, the focus of the proceedings “‘shifts to the needs of the child for permanency and stability.’” (*In re Celine R.* (2003) 31 Cal.4th 45, 52, quoting, *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

At the permanency planning hearing, the juvenile court determines a permanent plan for the child, and may order one of three alternative plans: adoption, guardianship, or long-term foster care. (§ 366.26, subd. (b); see *In re J.C.* (2014) 226 Cal.App.4th 503, 528.) If the child is adoptable, “‘there is strong preference for adoption over the alternative permanency plans.’” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.) If the court finds that the child is adoptable, then the court must terminate parental rights. (See § 366.26, subd. (c)(1).) “[T]o avoid termination of parental rights and adoption, a parent has the burden of proving, by a preponderance of the evidence, that one or more of the statutory exceptions to termination of parental rights set forth in

section 366.26, subdivision (c)(1)(A) or (B) apply.” (*In re Anthony B.*, *supra*, 239 Cal.App.4th at p. 395.)

The mother argues that the juvenile court erred in finding that the benefit exception did not apply. (§ 366.26, subd. (c)(1)(B)(i).) We disagree.

The benefit exception exists where “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i), *italics added*; see *In re Anthony B.*, *supra*, 239 Cal.App.4th at p. 395.) In deciding whether this exception applies, “the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 528.) “If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Id.* at pp. 528–529.)

In addition, the parent-child relationship must “promote[ ] the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re J.C.*, *supra*, 226 Cal.App.4th at pp. 528-529.) The factors the juvenile court considers in making this case-by-case assessment include “[t]he age of the child, the portion of the child’s life spent in the parent’s custody,” the effects of the interaction between the parent and the child, and the child’s particular needs. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1166.)

The benefit exception “does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) “A child who is

determined to be a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may benefit the child to some degree but does not meet the child's need for a parent.” (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.)

“It is not enough to show that the parent and child have a friendly and loving relationship.” (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 529.) ““Interaction between [a] natural parent and child will always confer some incidental benefit to the child . . . .” [Citation.] [Although] “. . . friendships are important, a child needs at least one parent. Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent.”” (*Ibid.*) Thus, “[n]o matter how loving and frequent the contact, and notwithstanding the existence of an ‘emotional bond’ with the child, ‘the parents must show that they occupy ‘a parental role’ in the child’s life.’” [Citations.] The relationship that gives rise to this exception to the statutory preference for adoption “characteristically aris[es] from day-to-day interaction, companionship and shared experiences. ”” (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1165.) Therefore, it is only in an ““extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.”” (*Id.* at p. 1166.)

We apply a mixed standard of review to the juvenile court’s determination whether the benefit exception applies. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.) When, as here, the court determines that a parent has not satisfied his or her burden of proof, we decide whether, as a matter of law, the evidence compels a finding favorable to the parent. (See *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528 [“where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law”].) When the court determines that a parent has satisfied his or her burden, we apply the substantial evidence standard of review. (See also *In re K.P.*, at pp. 621-622.) Finally, if

the court in the exercise of its discretion concludes there is a parent-child beneficial relationship but that the benefit to the child is not sufficiently compelling to outweigh the benefit of adoption, we review that conclusion for abuse of discretion. (*Ibid.*; accord, *In re Anthony B.*, *supra*, 239 Cal.App.4th at p. 395.)

Here, the parties agree that the visitation component of the benefit exception was met. Nevertheless, the juvenile court found that the parent-child relationship did not rise to the level required under the exception, and the evidence in the record does not compel a contrary finding.

The mother's limited visitations over the long term affected her ability to create the kind of significant and compelling parent-child relationship generally required in order for the benefit exception to apply. By the time of the section 366.26 hearing, both boys had spent most of their young lives out of the mother's parental care. Although her visits were genuinely positive and brought enjoyment to the boys, there was no indication that there were any negative effects after the visits ended. To the contrary, the boys have apparently bonded well with their prospective adoptive parents. That is, there is no indication that the mother occupied a uniquely parental role in the boys' lives.

The mother's reliance on *In re Amber M.* (2002) 103 Cal.App.4th 681 (*Amber M.*) is unpersuasive. In *Amber M.*, a bonding study concluded that the mother and children "shared 'a primary attachment' and a 'primary maternal relationship,'" and severance of that relationship could be detrimental. (*Id.* at p. 689.) One of the children's therapists opined that the mother and child "had a strong bond and it was important that their relationship continue." (*Ibid.*) Another therapist testified to the "positive and very important" relationship between mother and child. (*Id.* at p. 690.)

Here, the mother sets forth no such evidence as cited in *Amber B.* and we see none in the record. There was no bonding study. There was no evidence that that Ayden and Joshua had a uniquely parental bond with their mother. In fact, there was no evidence to contradict the juvenile court's finding that "there would be no detriment



suffered by the termination of parental rights, and in fact, it would be in their best interest for the court to do so for the hope of permanency.”

Thus, the juvenile court properly concluded the benefit exception did not apply and therefore did not err in terminating parental rights.

### III

#### DISPOSITION

The order is affirmed.

MOORE, J.

WE CONCUR:

O’LEARY, P. J.

THOMPSON, J.